

WELCOME TO THE APRIL VIRTUAL INDUSTRY LUNCHEON PROGRAM



PREPARING LEADERS IN REAL ESTATE: HOW TO MANAGE THE EFFECTS OF COVID-19

Please enjoy the virtual networking in the chat box.

Networking question:

What is the most useful app you are currently using?

Are you following us on social media?



CREW Dallas



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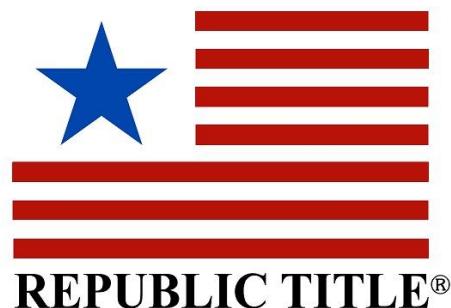


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CPAs & Advisors A graphic consisting of three red, wavy, horizontal bars of increasing height from left to right, positioned to the right of the company name.



EY
A dark blue, wavy horizontal line above the word 'STREAM' in a bold, dark blue sans-serif font.

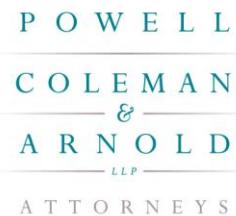
A graphic of three stacked cubes, with the top cube being pink and the bottom two being grey.

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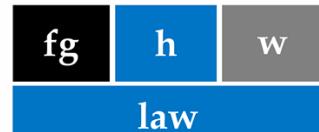


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CORNERSTONE & AFFILIATE MEMBERS 2020



Cornerstone Members

**Sally Longroy, Guida, Slavich & Flores
Christine Cesca-Rathseber**

Affiliate Members

**Valerie Biggs, Genea
Pamela Bryant, Platinum Parking
Angela Dodson, Suddath
Lisa Lane, Airwavz Solutions
Amy Linton, Move Solutions, Ltd.
Briel O'Shields, Crimson
Andrea Payne, LAZ Parking
Crystal Reyner, Rapid Power Management
Kathryn Shrum-Stockdale, Secure On-Site Shredding
Sydney Townsend, Sunwest Communications**

UPCOMING VIRTUAL EVENTS



CRE Career Day- Educate your kids about CRE Careers
April 23, 12:00 CT
You're working, they're learning, and we're all in this together—at home. Educate your kids about CRE careers on CREcareerday.

Member Engagement Orientation
April 28, 5:00 pm - 6:00 pm

CREW Connect Networking Breakfast- Downtown Dallas Group
May 5, 8:00 am-9:00 am

CREW Connect Networking Breakfast - North Dallas Group
May 12, 8:00 am - 9:00 am

Lunch and Learn: "Working smarter, not harder with transitioning tools for updating resumes, sourcing contacts and opportunities during this time."

May 5, 12:00 pm -1:00 pm

Happy Hour Prospective Member Event
May 19, 5:00 pm

May Industry Luncheon
May 20, 11:45 am - 1:00 pm



CREW DALLAS PRESENTS

PREPARING LEADERS IN REAL ESTATE: HOW TO MANAGE THE EFFECTS OF COVID-19

Presenters



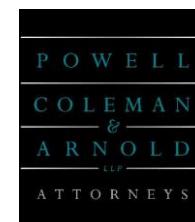
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TX CLE Credit

Course Number	174083334
Title	Prep. Leaders in RE: How to Manage the Effects of COVID-19
Start Date	04/15/2020
End Date	04/15/2020
Credit Hours	1.00
Ethics Hours	0.00



COVID-19 Hot Topics

- Force Majeure Clauses, Duty to Mitigate Losses & Affirmative Defenses (Ashley)
- Impact of COVID 19 on Commercial Leasing and Managing Debt in Crisis (Karen)
- COVID 19 Impact on Lending (Laurie)

Force Majeure

Is the COVID-19 outbreak a force majeure event?

**It depends on the specific language in
your contract....**

So... READ YOUR CONTRACT.

Force Majeure

- No “standard” force majeure (FM) clause.
- Negotiated clauses like any other.
- FM terms vary by industry & by contract.
- Narrowly construed by the courts and typically only applied to the types of events listed on the face of the contract.

Force Majeure

Sample clause (Purchase Agmt):

- In the event that Seller's or Purchaser's performance of their respective obligations pursuant to this Agreement is prevented or delayed, **either directly or indirectly**, by consequence of an act of God, natural disaster, act of war [...] **or pandemic or other infectious disease** (any such cause, "Force Majeure"), then so long as the performing party provides written notice to the other party of such Force Majeure event, neither Seller nor Purchaser shall be liable for such nonperformance.
- Without limitation of the foregoing, the parties acknowledge and agree that Force Majeure delay due to a "**pandemic or other infectious disease**" shall include any work force, supply chain, or other shut down [...] including any delay or refusal to issue permits or other governmental approvals. Due to the uncertain and fluid nature of a pandemic or other infectious disease event, and the parties' inability to forecast how the same may affect the obligations of the parties under this Agreement, Seller and Purchaser agree to work in good faith in determining the exact nature of the extension provided in connection with any particular obligation under this Agreement.

Force Majeure

Sample clause (Hotel Management Agmt):

- (a) If at any time during the Term it becomes necessary in Manager's reasonable opinion to cease operation of the Hotel in order to protect the Hotel and/or the health, safety and welfare of its guests and employees for reasons such as acts of war, acts of terrorism, riots, insurrections, fire or other casualty, earthquakes, hurricanes, tornados, or other natural disasters, **epidemics, quarantines or other public health catastrophes**, mechanical, electrical or other material system breakdown, cyber-attacks, major alteration, renovation or repair projects for the Hotel, **disruption to local, national or international transport services, order or regulation of a governmental authority, governmental action (including suspension, revocation or denial of any license or permit)**, unless caused by Manager's gross negligence or willful misconduct, strikes, labor unrest, **acts of God or other events or circumstances outside of the parties' reasonable control preventing the operation of the Hotel in a safe manner or the performance of an obligation in a timely manner** (collectively, "Force Majeure"), then in such event Manager may, after receipt of Owner's prior written approval when the circumstances and timing permits, **elect to close and cease operation of all or part of the Hotel (and subsequently reopen and recommence operating the Hotel** at such time as Manager and Owner reasonably determine that such may be done without jeopardy to the Hotel, its guests and Hotel Employees.

Force Majeure

Sample clause (Hotel Management Agmt):

- (b) With respect to any obligation to be performed by a party under this Agreement, such party shall in no event be liable for failure to perform such obligation when prevented by any Force Majeure. The time within which such obligation shall be performed shall be extended for a period of time equivalent to the delay resulting from such Force Majeure; provided, however, that **the party claiming the extended time due to the Force Majeure shall provide written notice to the other party of the occurrence of Force Majeure within 10 days after the occurrence of the same in order to enjoy an extension as a result thereof.**"

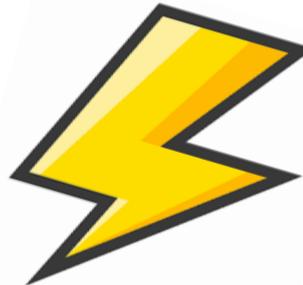
Force Majeure

List of events:

- Flood
- Earthquake
- Fire
- Storm
- System breakdowns
- Cyber-attacks
- Strike or labor stoppages
- Acts of terrorism
- War
- Natural Disaster
- Epidemic, quarantine, or other public health catastrophe....?
- Pandemic or other infectious disease...?
- Interruption to local, national or international transport services
- Regulation of governmental authority
- Act of God
- Catchall (outside of the parties' reasonable control)

Force Majeure

Act of God....?



- Force or act of nature
- Unforeseeable
- Could not be prevented by reasonable foresight or care
- Global COVID19 pandemic....
Currently unsettled and likely to be litigated.

Force Majeure

Standard for Non-Performance:

- Impossible
- Impracticable
- Illegal
- More than financial hardship

Force Majeure

Duty to Mitigate?

Section 91.006 of the Texas Property Code
(Landlord's Duty to Mitigate Damages):

- (a) A landlord has a duty to mitigate damages if a tenant abandons the leased premises in violation of the lease.
- (b) A provision of a lease that purports to waive a right or to exempt a landlord from a liability or duty under this section is void.

Force Majeure

Notice requirements:

- What does your clause require? Reasonable? Prompt?
Immediate? Within 10 days?
- When did the force majeure begin?
 - When WHO declared a pandemic?
 - When President Trump declared a national emergency?
 - When Governor Abbot declared state disaster?
 - When Dallas County issued shelter in place order, only allowing “Essential Businesses” to operate?

Force Majeure

Other tie-in contract provisions:

- Tenant Defaults and Lockouts
- Tender of Possession of the Leased Premises by Landlord
- Access to the Premises
- Continuous Use or Abandonment for a certain amount of days
- Casualty/Condemnation
- Insurance Requirements
- Termination Rights

Force Majeure

Common Law Defenses

- Impossibility/Impracticability
 - Where the thing necessary for performance has been destroyed or deteriorated and where the action is prevented by government regulation.
 - The situation must be such that “the thing cannot be done,” not that “[you] cannot do the thing.”
 - Again, more than mere financial hardship.
 - Narrowly construed.

Force Majeure

Common Law Defenses

- Frustration of Purpose
 - When an unforeseen event undermines a party's principal purpose for entering into a contract such that the performance of the contract is radically different from the performance that was originally contemplated by both parties.
- Duty to Mitigate
 - If the duty exists...

Force Majeure

UCC Defenses - Section 2-615:

- Seller did not assume the risk of the event.
- The non-occurrence of the event was a basic assumption.
- Performance “commercially impracticable” as a result of the event.

Force Majeure

Other UCC Considerations for Sale of Goods:

- **Section 2-207**
 - Battle of the [purchase and sale] forms
 - The contract consists of the matters on which the parties agree plus the matters included in one party's form but not the other, minus matters upon which the forms conflict.
- **Section 2-309**
 - If the contract is silent, delivery of the goods is due within a “reasonable time”.
 - Consider what is “reasonable” given the circumstances.
- **Section 1-304**
 - Implied duty of good faith and fair dealing

Force Majeure

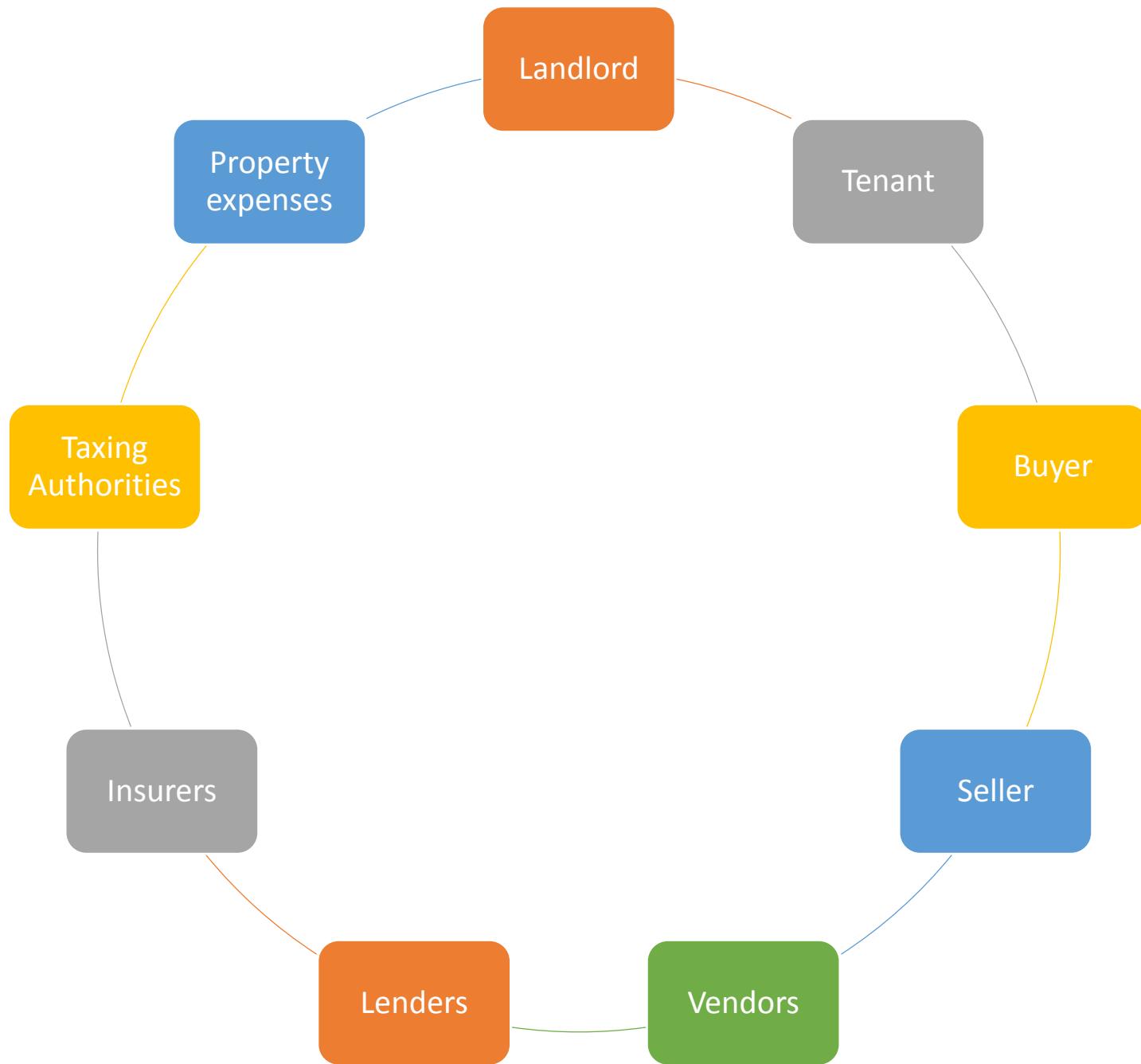
Creative Solutions:

- Amendments or Side Letter Agreements to waive or extend performance of certain obligation
- Abatement of rent (with or without term extension at tail-end of lease)
- Late Fees
- Termination Rights



Impact of COVID 19 on Commercial Leasing and Managing Debt in Crisis





Perfect/Protect Your Rights

Contractual

Statutory

Plan ahead for logistical issues

Perfect/Protect Your Rights

- Notices of default and demands for cure
- Force majeure notices
- File UCC-1s and investigate what is on file
- Record statutory landlord liens
- Gather contracts, including lease, amendments, guaranty agreements, assignments, assumptions, subordination agreements, etc.
- READ THEM!**

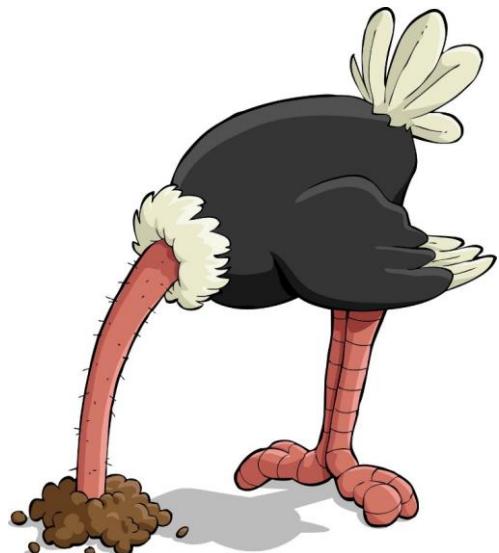
Be Proactive

Don't be an Ostrich.

- Don't wait. Communicate.
- Reach out to business partners (landlord, tenants, lenders, insurers) now.
- Are you a priority? Who/what are your payment priorities?
- Make your list of priorities
- Problem won't be going away
- Assess cash flow needs

Consult with advisers (including legal counsel) NOW.

- Devise plans re: declaring FM
- Devise responses to FM notices
- Devise short and long term plans for defaults
- Devise plans for workouts (short/long term)
- Assess operations and what is feasible



Status of Courts/Clerks/Lawsuits

- Many courts remain operational, subject to modifications.
- Lawsuits can still be filed.
 - Pleadings can still likely be filed
 - E-filing
 - Clerks may be short handed or limited operations or closed for processing
- Expect delays.
 - Especially with trial settings
 - Courts will expect cooperation on pre-trial deadlines

Remote Proceedings

- Video pre-trial proceedings becoming more common and permitted
 - Hearings (telephonic, some video)
 - Depositions
 - Mediations
 - Zoom popular platform.

Eviction Proceedings Moratoriums - Texas

- TXSCT –statewide (April 6, 2020 order)
 - Applies to residential eviction proceedings only
 - No trials through April 30, 2020
 - Writs of possession may not be executed until after May 7, 2020
 - Limited exceptions (e.g., imminent threat)
- Dallas County (April 8, 2020 order)
 - Arguably applies to all eviction proceedings (residential/commercial)
 - 60-day suspension on hearings and writs of possession “to prevent renters from being displaced”
 - “Nothing in the moratorium relieves tenants of liability for unpaid rent.”
 - “Landlords should cap late fees for delayed payment of rent at fifteen dollars (\$15) per month.”

Eviction Proceedings Moratoriums - Texas

- Harris County – (April 6, 2020 order) - mirrors TXSCT order re: evictions
- Collin County (JP Standing Order, March 20, 2020)
 - Stay on all court proceedings until May 8, 2020, except for essential court proceedings.
 - No eviction settings or writs until after May 8, 2020.
 - No distinction between commercial/residential
- Travis County
 - Applies specifically to residential and commercial proceedings
 - Stay on proceedings through May 8, 2020
 - Writs of possession will not be issued until after May 13, 2020
 - Notices to vacate – barred (Travis/City of Austin)
 - City of Austin – bar on evictions; notices to vacate; excluding tenants.
- Check City and County orders – rapidly evolving
- Unless otherwise ordered, rent still due and LL can still send notices/demands/etc. Unless otherwise ordered, no change to LL's statutory or contractual lock out rights.

Workouts

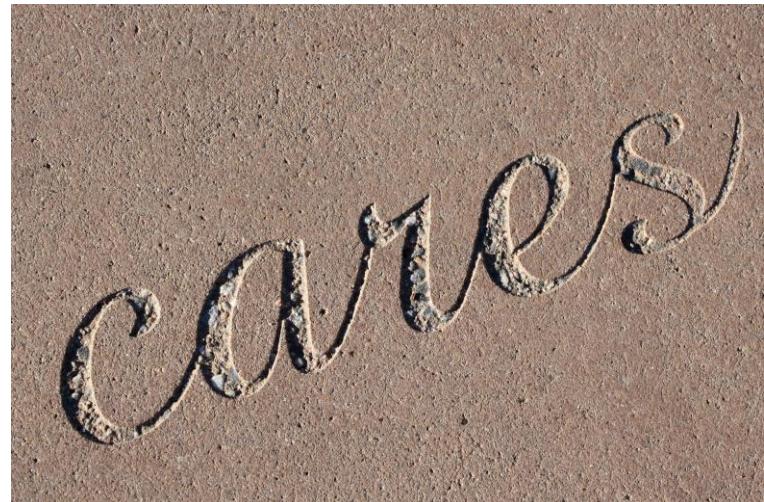
- Rent reduction/forgiveness
- Rent deferment
 - Payout over time
 - Lump sum at end of lease term
- Late fees
- Interest
- Security Agreements/Promissory Notes/Collateral
- Personal guaranty agreements
- Agreed judgments
- Lender consent



Document, document, document!

COVID-19: Its Impact on Lending Available Relief Through Loans and Loan Workouts

- On March 27, 2020, the Coronavirus Aid, Relief, and Economic Security Act (“**CARES Act**”) was signed into law. The CARES Act expanded upon the existing Economic Injury Disaster Loans program as well as established several new temporary programs to address the COVID-19 outbreak including:
 - Payroll Protection Program (“**PPP**”)
 - Economic Injury Disaster Loan (“**EIDL**”) program
 - EIDL Express Bridge Loans
 - EIDL Loan Advance
 - SBA Debt Relief
 - Mid-Size Business Loan
 - Main Street New Loan Facility
 - Main Street Expanded Loan Facility



PAYROLL PROTECTION PROGRAM LOANS (PPP)

- Primarily targeted for small businesses to maintain payroll and help stabilize the financial system
 - Eligible businesses with less than 500 employees or that meet the SBA's size standard (employee based or revenue based corresponding to its primary industry), sole proprietors, self-employed, independent contractors in operation as of February 15, 2020
 - Special rules for hotel and food services sector (such as Affiliation rules)
- Maximum Amount of Loan = the lesser of:
 - (i) \$10 million; or
 - (ii) 2.5 times the average monthly payroll for the preceding 12 months with special rules regarding companies in business for less than 1 year. Note: Salary for calculation purposes is capped at \$100k/year.
 - PLUS: the outstanding amount of any emergency SBA loan obtained between 1/31/2020 and 3/27/2020
- Funds can be used to pay payroll, group health benefits, salaries and employee commissions, interest on mortgages and debt, rent, and utilities



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PAYROLL PROTECTION PROGRAM LOANS (PPP) - CONTINUED

- Interest Rate to be 1.0% fixed
- Loan Term to be 2 years after forgiveness
- Loan payments to be deferred for at least 6 months up to 1 year
- Loan will be non-recourse, no pledge of collateral, no guaranty
- Part or all of this loan may be forgiven during an 8-week period beginning on the date of the 1st disbursement of loan proceeds to borrower. Lender must make the 1st disbursement no less than 10 calendar days after the date of approval of the loan.
 - At least 75% of the loan proceeds must be used for “qualified” payroll costs
 - No more than 25% of the loan proceeds may be used for non-payroll costs
- Apply directly through SBA lenders before June 30, 2020

PAYROLL PROTECTION PROGRAM LOANS (PPP) - CONTINUED

- Interim Rules, Interim Final Rules and FAQ sheets provide guidance, some answers and questions and create some inconsistencies such as:
 - Revised the PPP application [currently SBA Form 2483 (4/20)]
 - Applicants that obtained an EIDL may apply for a PPP loan, but if the EIDL was used for payroll costs, the PPP loan must be used to re-finance the EIDL
 - If a company receives the \$10,000 advance from the EIDL program and later receives a PPP loan, the company must subtract the \$10,000 advance from any amount eligible for forgiveness under the PP program
 - An eligible borrower includes a “small business concern”
 - Ineligible businesses includes passive businesses owned by developers and landlords that do not actively use or occupy the assets acquired or improved by the loan proceeds (there are exceptions). Also businesses that previously defaulted on federal loan or federally assisted financing which resulted in a loss to the federal government or financing agency
 - Review questions, certifications, authorizations and be aware of penalties for “knowingly making false statements”

PAYROLL PROTECTION PROGRAM LOANS (PPP) - CONTINUED

- Resources: The SBA covers borrowers' eligibility and borrowing calculation matters. The Department of Treasury provides information for both borrower and lender matters.
 - SBA's website: www.sba.gov
 - SBA employee-based size standards: <https://www.sba.gov/size-standards/>
 - SBA's affiliation standards: www.census.gov/eos/www/naics/
 - (NAIC code 72 for Hotel and Food Services)
 - Department of Treasury: home.treasury.gov/policy-issues/cares/assistance-for-small-businesses
 - DOT Tools for Small Businesses: <https://home.treasury.gov/policy-issues/cares/assistance-for-small-businesses>

ECONOMIC INJURY DISASTER LOAN (EIDL) PROGRAM

- To assist small businesses pay immediate expenses during the pandemic
- Companies with up to 500 employees including cooperatives, ESOPs, nonprofit organizations, sole proprietors, self-employed and independent contractors
- The EIDL Program includes:
 - Express Bridge Loan of \$25,000
 - EIDL Loan Advance of up to \$10,000
 - SBA Debt Relief for existing debt



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ECONOMIC INJURY DISASTER LOAN (EIDL) PROGRAM - CONTINUED

- Express Bridge Loan of up to \$25,000
 - Current business relationship with an SBA express lender
 - May be available as economic support to overcome temporary loss of revenue for purposes of bridging the gap while applying for a direct SBA loan
- EIDL Loan Advance of up to \$10,000 (may scale back based on \$1,000 per employee)
 - To provide economic relief to a small business experiencing a temporary loss of revenue
- SBA Debt Relief
 - To provide financial reprieve
 - Automatic payment of principal, interest and fees of current EIDL loan (Section 7(a), 504 and microloans) for 6 months

ECONOMIC INJURY DISASTER LOAN (EIDL) PROGRAM - CONTINUED

- Automatic payment of principal, interest and fees of new EIDL loan (Section 7(a), 504 and microloans) issued prior to September 27, 2020
- For disaster loan in “regular servicing” status as of March 1, 2020, automatic deferments through December 30, 2020
- Maximum amount of loan of up to \$2 million (may reduce maximum)
- Funds may be used to pay fixed debts, payroll, accounts payable and other bills that cannot be paid because of the disaster’s impact.
- Interest Rate to be 3.75% for profit borrowers and 2.75% for non-profit borrowers
- Loan Term up to 30 years on a case by case basis
- Deferment of loan repayments permitted for 1 year

ECONOMIC INJURY DISASTER LOAN (EIDL) PROGRAM - CONTINUED

- A personal guaranty may be required on loans over \$200,000
- A pledge of collateral may be required loans over \$25,000
- No final guidance received yet
- If a borrower applied or received an EIDL loan or advance, the borrower may apply for a PPP loan; however, to the extent the EIDL calculation or proceeds related to payroll, it may effect eligibility and the PPP loan will be used to refinance the existing EIDL. If an advance was received, the advance will be deducted from the amount to be forgiven under the PPP loan. If the EIDL loan was not used for payroll, then it does not effect eligibility.

ECONOMIC INJURY DISASTER LOAN (EIDL) PROGRAM - CONTINUED

- Read and be familiar with PPP and EIDL rules and regulations
- Review certifications and authorizations, and loan documents
- Consider placing funds in separate account for tracing purposes
- Track payments during 8-week period to prove up entitlement to forgiveness and during the loan term to demonstrate compliance with using proceeds for authorized purposes
- Apply directly online at:
<https://covid19relief.sba.gov/#/?v=1.0c2c3c294e4af074736a829aa1d5945b50008d45>
- SBA Disaster Assistance Customer Service Center: 1-800-659-2955; Email: disastercustomerservice@sba.gov ; or
www.SBA.gov/disaster

MIDSIZE BUSINESS LOAN PROGRAM UNDER TITLE IV

- This SBA lending facility has 2 components:
 - A fund to provide direct loans for a short list of distressed, industry-specific and essential companies (air carriers and businesses critical to maintaining national security)
 - A fund to be used for loans, loan guarantees and investments in support of eligible businesses, states and municipalities. A portion of these funds will provide direct low-interest loans for eligible businesses (**“Midsize Business Loans”**)
 - May be available as economic support to overcome temporary loss of revenue for purposes of bridging the gap while applying for a direct SBA loan
- An “eligible business” requirements
 - Having between 500 and 10,000 employees
 - Has not otherwise received adequate economic relief in the form of a loan or loan guarantee under the CARES Act
 - Is organized in or under the laws of the US.

MIDSIZE BUSINESS LOAN PROGRAM UNDER TITLE IV – CONTINUED

- Currently the requirements do not include specifics other than:
 - A maximum interest rate of 2% per year
 - Loan must be made prior to December 31, 2020
 - Term up to 5 years
 - Automatic deferment for at least 6 months or longer pursuant to the Treasury Secretary's discretion
 - No loan forgiveness
 - Treated as indebtedness for tax purposes
- Conditions:
 - A prohibition against dividends or making other capital distributions on common stock during the term of the loan and for 1 year after the loan is paid off
 - A prohibition against stock buybacks

MIDSIZE BUSINESS LOAN PROGRAM UNDER TITLE IV – CONTINUED

- Caps on employee compensation related to:
 - Employees paid more than \$425k annually
 - Officers and employees receiving more than \$3,000,000 per year
- Borrower certifications
 - The loan is necessary to support the ongoing operations of the applicant because of the uncertainty of economic conditions as of the date of the application
 - The intent is to use the funds to retain at least 90% of the borrower's workforce at full compensation and benefits until September 2020
 - The funds are intended to restore not less than 90% of the borrower's existing workforce as of February 1, 2020 and to restore all compensation and benefits to workers no later than 4 months after the termination of the public health emergency
 - No outsourcing or offshore jobs for the term of the loan and 2 years after repayment

MAIN STREET NEW LOAN FACILITY – SECTION 13(3) OF THE FEDERAL RESERVE ACT

- On April 9, the Federal Reserve established the Main Street Lending Program to enhance support for small and mid-sized businesses that were in good financial standing before the crisis.
 - Small and medium-sized businesses with up to 10,000 workers or up to \$2.5 billion in revenues in 2019
 - A minimum of \$1 million up to the lesser of: \$25 million or an amount + existing outstanding/committed but undrawn debt not exceeding 4x EBITDA
 - Term up to 4 years
 - Adjustable rate of SOFR + 250-400 basis points
 - Principal and interest payments will be deferred for one year
 - Commit to make reasonable efforts to maintain payroll and retain workers
 - Required to follow compensation, stock repurchase, and dividend restrictions
 - Companies that have taken advantage of the PPP may also take out a Main Street loan

MAIN STREET EXPANDED LOAN FACILITY – SECTION 13(3) OF THE FEDERAL RESERVE ACT

- This credit facility is intended to facilitate lending to small and medium sized businesses, specifically to lend to a single common special purpose vehicle (“SPV”) on a recourse basis.
 - Small and medium-sized businesses with up to 10,000 workers or up to \$2.5 billion in 2019 annual revenues
 - Other terms similar to the Main Street New Loan Facility

AGENCIES' STATEMENTS & GUIDANCE ON LOAN WORKOUTS AND MODIFICATIONS

- The mandate from Congress is to promote maximum employment and stable prices, along with promoting the stability of the financial system. In response, the Federal Reserve, FDIC, and other agencies have issued interagency statements and other types of guidance on loan modifications and reporting for financial institutions working with customers affected by the Coronavirus. These statements provide advice and guidance to lenders about addressing pending defaults under existing credit facilities.



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LOAN WORKOUTS AND MODIFICATIONS ON EXISTING CREDIT FACILITIES

- Agencies' guidance and suggestions for financial institutions on working with borrowers
 - View modifications as positive actions in an effort to mitigate adverse effects on borrowers
 - Be proactive and work constructively, such as mitigating credit risk through prudent actions consistent with safe and sound practices that are in the best interest of the financial institutions, borrowers and the economy
 - When documenting a modification, suggests as part of the borrower's request to include such items as borrower's recovery plans, sources of repayment, additional advances on existing or new loans, and the value of any collateral
- A few things for a borrower to consider:
 - The goal is to establish a plan to "workout" the default and provide the temporary relief requested by borrower with terms that are thorough, practically achievable and carefully prepared.
 - Reach out to your lender, but be prepared to provide the information the lender will need to evaluate your situation and request for relief

LOAN WORKOUTS AND MODIFICATIONS ON EXISTING CREDIT FACILITIES – CONTINUED

- Know what is in the loan documents: maturity dates, payment terms, credit lines, covenants, collateral, cross defaults, defaults, default interest rate, penalties, required notices, taxes, reporting requirements, restrictions on borrower's ability to incur any additional indebtedness
- Gather current financial information and status and describe other outstanding debt, available collateral, limitations and restrictions, current capabilities for debt management, timing to resume some operations, timing to resume full operations, and a plan to improve cash flow
- Ascertain and describe the material adverse change (if any) COVID-19 has had on the financial condition of the company
- Prepare a fair and reasonable plan to help the company get through this tough spot to continue to repay its loan and meet its obligations. This needs to go beyond just a date by which the borrower brings its payments current.
- Consider asking for the deferment of payments by extending the original maturity date with increased loan payments to make up the amount being deferred or by making payments due in a balloon payment at the end of the loan.
- From a lender's perspective, the modification is to provide temporary relief and to be targeted towards repayment not forgiveness.

LOAN WORKOUTS AND MODIFICATIONS ON EXISTING CREDIT FACILITIES – CONTINUED

➤ Status of Existing Loans

- Loans are considered current if less than 30 days past due on contractual payments at the time a modification program is implemented
- Agency examiners reminded that not all modifications result in being classified as troubled debt restructuring (“TDRs”). So agency examiner will use their judgment and will not automatically adversely risk rate credits affected by COVID-19 or classify as TDRs. Even if a modification is considered a TDR or adversely classified, agency examiners will not criticize prudent efforts to modify terms on existing loans for affected borrowers.
- Six month modifications such as payment deferrals, fee waivers, extensions of repayment terms or other delays in payment that are insignificant are referenced as short term modifications.
- The reporting guidelines loosen valuation requirements and allow appraisers to make an assumption about the interior of property where the appraiser is unable to access the interior due to COVID019. Also financial institutions do not have to obtain an updated property valuation when granting a short-term loan modification to a borrower affected by the pandemic.
- Financial institutions will be conducting fact-specific reviews to determine whether a long-term modification is considered a “subsequent transaction”. Subsequent transactions necessitate updated valuation information and closer scrutiny with respect to underwriting.

FANNIE MAE FORBEARANCE GUIDANCE

- Lender guidance regarding immediate, temporary relief for borrowers and properties impacted by COVID-19
 - If current as of February 1, 2020, immediately consider executing the simplified form of pre-negotiation letter
 - Forbearance of 1 to 3 monthly payments beginning with the first missed monthly payment after February 1, 2020
 - Require the borrower to bring the mortgage loan current by the earlier of: 12 months after the end of the forbearance period or the borrower's receipt of business income insurance proceeds (or any other assistance or relief program proceeds)
 - Require the borrower to suspend tenant evictions
 - Require the borrower to remit all excess cash flow after the payment of operating expenses
 - Require the borrower to make certifications
 - Fannie Mae to waive late charges during forbearance period

UNCHARTERED TERRITORY: WRAP-UP

- Bottomline: The intent is to help businesses recover from economic losses sustained because of the pandemic
- Takeaways:
 - Legislation, rules, interagency statements, regulations: All have been issued quickly to address business owners' needs and support and stabilize financial systems. They are complicated, complex, and constantly being modified, clarified, and often times changed substantially.
 - The programs are designed to provide temporary relief
 - If applying and receiving an emergency loan or requesting a workout for an existing loan or line of credit, review the loan documents
 - Communication is more important than it ever has been. Discuss your plan and issues upfront with your lender
 - From an SBA loan perspective: Understand the scope and limitations of each of the CARES Act programs to take advantage and maximize the benefits offered
 - From an existing loan facility perspective: Communicate to your lender your circumstances and need for temporary debt relief

Questions?

Submit your questions through the Zoom
Q&A portal!

Thank you!



CREW DALLAS PRESENTS

PREPARING LEADERS IN REAL ESTATE: HOW TO MANAGE THE EFFECTS OF COVID-19



About Ashley ...

Ashley Deweese focuses her practice in commercial real estate in the hospitality, multi-family, retail, industrial, healthcare and office arenas, working on various investment and development transactions from inception through closing.

She has broad experience representing buyers, sellers, developers, borrowers and investors in nationwide acquisitions, dispositions and development of vacant and developed real property. She also advises landlords and tenants in leasing and management of commercial properties, investors in the purchase of model homes and leaseback transactions, and lenders and borrowers in the negotiation and due diligence aspects of real estate financing. Ashley has advised on many types of financing vehicles, including permanent, mezzanine and construction loans, revolving lines of credit, refinancing, and loan modifications, as well as on various aspects of renewable energy projects.

She also has experience with corporate transactions, including the formation and structuring of property-related joint ventures and mergers and acquisitions, and the tax aspects of such deals.

What Ashley enjoys most about her work is the people, particularly connecting like-minded people to one another. She proactively seeks out opportunities to leverage her network and build bridges, which may benefit those individuals and their businesses.

Additionally, Ashley is an active member of CREW Dallas, Dallas Association of Young Lawyers (DAYL), The Real Estate Council (TREC) and Dallas Texas Exes!

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About Karen ...

Karen L. Hart is a business attorney with over 18 years of experience litigating commercial and real estate disputes.

Karen counsels clients on creditor's rights issues, real estate and landlord-tenant matters as well as various other contract and business disputes. She is a tireless advocate for her clients, providing guidance on business legal matters, such as lease, purchase and sale, brokerage and property management disputes, specific performance claims, commercial evictions, lis pendens, lien and bond claims, lien priority disputes, promissory note claims, commercial foreclosures, bankruptcy claims, professional ethics and liability matters, bills of review, confidentiality, non-competition and non-solicitation agreements and related disputes and injunctive proceedings, and business tort claims, including tortious interference with contracts and business relationships, civil theft, fraud, and misappropriation of trade secret claims.

Prior to joining Bell Nunnally, Karen served as a law clerk to the Honorable Hayden Head, Jr., United States District Court, Southern District of Texas, Corpus Christi Division. Karen is an honors graduate of the University of Texas at Austin School of Law.

Karen's recent accolades include: Dallas Top 50 Women Lawyers Award, Texas Diversity Council (2017); Best Lawyers in America (2017-2019); Winning Women Award, Texas Lawyer (2014); Women in Business Award, Dallas Business Journal (2012); Leadership Council on Legal Diversity Fellow (2017). Karen also serves as Bell Nunnally's General Counsel.

Karen is a long-time member of CREW and a former board member of CREW Dallas.

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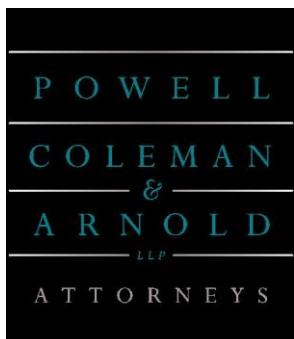
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About Laurie...

Laurie D. Arnold is a partner in Powell Coleman & Arnold LLP, a firm established in 1995 by members of several prominent Dallas law firms. With the support and encouragement of their clients, they created a structure to provide efficient and personalized service to clients in the real estate industry and other portions of the business community. The firm's practice focuses on a broad range of real estate and business-related matters, including the sale and acquisition, financing, development, management and leasing of real property and the formation, operation and disposition of business entities. Powell Coleman & Arnold's clients include developers, individual and institutional investors, including REITs and other equity funds, lenders, service companies, brokers and other leaders in the real estate industry.

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During her 20 plus years of practice, Laurie has worked in private practice as well as in-house as general counsel for two national real estate developers and entrepreneurs. While in-house, Laurie oversaw legal and regulatory matters related to the companies' investments and various divisions, operations, and real estate portfolios and other asset types. Laurie's private practice focuses on commercial real estate and business transactions. In her private practice, Laurie represents entrepreneurs, developers, owners, landlords, tenants, borrowers, investors and business owners in a wide array of real estate and business transactions and general counsel services. Her experience includes the sale and acquisition of real property and operating companies, construction and permanent lending, negotiating commercial contracts, construction contracts, office and retail leases, management agreements, easements, and other agreements related to development. In addition, Laurie has advised her client in forming business entity structures for investment in real property and handles day to day legal matters that arise in the ordinary course of business for business owners and operating companies.